Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00499/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 9th November 2018	**On 19th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[B H]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr W Khan (Counsel)
For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge V A Cox, promulgated on 23rd February 2018, following a hearing at Birmingham Priory Courts on 9th February 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on [~] 1993. He appealed against the decision of the Respondent dated 22nd December 2017, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he received a threatening telephone call asking that the Appellant be recruited to fight with the insurgency. He declined to do so. His house was then bombed. He escaped his home. The home itself was destroyed. The Appellant does not know whether his family escaped with him or did not and the evidence was ambiguous on this issue. He does not now have the necessary documentation to enable him to return back to Iraq.

The Judge's Findings

4. In her determination, Judge Cox made the following findings. First, his account of being blown across his front yard and against a door because of a single bomb blast, that blew him towards the house, was not credible. It was not credible that he did not then remain at the property to investigate the fate of his family. Nor was it credible that the other property he went to was only one minute away and that he did not then think of returning back to look for other family members there.

5. Second, the judge did not find it credible that the Appellant did not think to collect his family's identity documents, but abandoned them, although he stated that all of the money was taken by the other family and the man he ran away with (see paragraphs 52 to 55).

6. Third, the judge held that the Appellant had given an inconsistent account in respect of his work ID and having handed the same in at his "AIR" it is incredible that he said that he commenced his employment in October 2013 when the card quite plainly states that he started in February 2013.

7. Fourth, the judge did not find it credible that the Appellant received a threatening phone call seeking to recruit him. This would have been no more than a random enquiry. It was never repeated again. The Appellant's own evidence indicates that he reported the same to the police and they made efforts to deal with such matters (paragraph 65). Accordingly, the judge found that the Appellant's account was untrue, before turning on to consider whether he could safely return as a failed asylum seeker (paragraph 68).

8. In relation to the Appellant being able to return as a failed asylum seeker, the judge stated that "since the Appellant originates from the IKR of Iraq and speaks Kurdish I remind myself that there is no evidence that the authorities in the IKR require a failed asylum seeker to have an expired or current passport or laissez-passer" (paragraph 71). For this reason, the

judge found that the Appellant could return and not face any risk of destitution because "he will be able to contact his family and obtain a CSID in support of his family" (paragraph 75).

9. The appeal was dismissed.

Grounds of Application

10. The grounds of application state that Judge Cox erred in dismissing the Appellant's appeal because she had materially misdirected herself in relation to the facts. First, there was a factual error by the judge when she stated (at paragraph 70) that the Appellant was "from Kirkuk which is within the IKR". The reality was that the Appellant was from a small town by the name of "Tuz Khurmatu" which was in the "Saladin province". Therefore, any suggestion that the Appellant would not find any difficulty in relocating within IKR was bound to have been one made on a flawed assessment. Second, the judge asserted that the Appellant could not succeed because of **AA (Iraq) [2017] EWCA 994**, which refers to Kirkuk, among other places, being contested and as far as documentation was concerned former residents of the IKR would be returned there, whereas all other Iraqis would be returned to Baghdad. However, the judge failed to assess the risk of return to Baghdad in line with **AA (Iraq)**. This was because account had to be taken of **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018**, which makes it quite clear that for Kurdish Sunnis to return to Baghdad would be hugely problematic. Yet, there is no reference to this latter case.

11. On 22nd March 2018, permission to appeal was granted by the Tribunal.

Submissions

12. At the hearing before me, Mr Khan, appearing on behalf of the Appellant, as his Counsel, submitted that the judge had materially misdirected herself as to the facts. She states (at paragraph 70) that the Appellant is from Kirkuk, which is not the case, and then she states at paragraph 71 that he is from the IKR, which was also not the case. Thereafter, the judge goes on to refer to the Appellant as coming from that part of the country (at paragraph 75), such that there could be no confidence in the Appellant having been properly treated, in what is a very long and convoluted decision, whereby it is difficult to know precisely where the judge refers to the Appellant's account, and where the judge refers to her own findings of fact. The statement in the end "I therefore find that the Appellant can be returned to Iraq" (paragraph 76) is problematic, because it is not clear exactly where it is in Iraq that the judge felt the Appellant could be returned to. Mr Khan also stated that there was a difficulty in the way that the judge had come to her findings of fact. After stating the Appellant's narrative account, she states (at paragraph 47) that, "I can state at this early stage that I find that the Appellant was not a credible witness and do not find that the core of his account has remained consistent". Yet, this is without the judge making any findings of fact as

such. She reaches her conclusion first, and then refers to her findings thereafter, which was not the correct way of approaching matters, particularly as she had got his place of origin entirely wrong.

13. For his part, Mr Mills submitted, that he will have to accept that there is an error in terms of the judge's conclusion as to where the Appellant actually originated from, and would be returnable to. However, whether this was an error that was material was a matter that he would have to leave to this Tribunal. He submitted that, whereas it is true that the Appellant came from Tuz Khurmatu, this particular place is on the periphery of Kirkuk, and the judge may well not have been wrong in saying that the Appellant came from Kirkuk. Indeed, if the Appellant himself were to be asked, he would doubtless say that he did come from Kirkuk. Nevertheless, he would have to accept that the Appellant did not come from the IKR, and insofar as the judge states that the Appellant "originates from the IKR of Iraq" (paragraph 71) this was plainly wrong. In any event, Kirkuk was no longer contested. It used to be occupied by the Kurdish Peshmerga Army. It had now been taken over by the Iraqi Army. Nevertheless, the population had not been displaced and there were a substantial number of Sunni Muslims living there. Therefore, the Appellant could conceivably return there. Finally, as to the question of the Appellant having access to his CSID, the question was whether he can procure these documents to enable him to travel safely to his place of origin. The latest Tribunal judgment of **AAH [2017]** makes it clear that if he can get the documents then he is returnable. The Appellant had a family back home, who may well have documents that he could access, and he would certainly be able to make his way to his place of origin.

14. In reply, Mr Khan submitted that the judge had made it clear that she did not believe the Appellant, on the basis of a flawed assessment, and looked at in its entirety, it could not be said that that flawed assessment of the Appellant's credibility, could be divorced entirely from the plainly wrong factual conclusion reached by the judge as to where the Appellant originated from. In any event, the implications of **AA (Iraq)** have not been properly followed through, although that case was referred to in passing (at paragraph 75). It was certainly the case that **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018**, was not referred to. To conclude that, "I therefore find that the Appellant can be returned to Iraq" (paragraph 76) begged the question as to precisely where the judge thought the Appellant was returnable to.

15. He asked me to allow the appeal.

Error of Law

16. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows. This is a case where, the judge has wrongly concluded, in terms of the eventual question of whether the Appellant is returnable to

Iraq, on the basis of her conclusion that, "since the Appellant originates from the IKR of Iraq and speaks Kurdish I remind myself that there is no evidence that the authorities in the IKR require a failed asylum seeker to have an expired or current passport or laissez-passer" (paragraph 71). The Appellant is not from the IKR. He is from Tuz Khurmatu which is in the province of Saladin. The judge, even if one makes an allowance, for not knowing whether the Appellant came from the province of Kirkuk or from the city of Kirkuk, makes no clear finding on this question. In the event, the question of returnability has been wrongly arrived at. Therefore, the decision in this respect has infected an actual finding as to the Appellant's returnability. It is also the case that the full implications of **AA (Iraq) [2017]** have not been properly applied and neither has there been a reference to **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018**. For these reasons, this matter needs to be returned back to the First-tier Tribunal to be determined by a judge other than Judge V A Cox.

Notice of Decision

17. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge V A Cox, pursuant to Practice Statement 7.2(a) at the next available opportunity.

18. An anonymity direction is made.

19. This appeal is allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge Juss 17th December 2018